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NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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5 Attorney for Plaintiffs DANILO DEL VALLE AND JENNIFER DEL VALLE

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA-SAN JOSE DIVISION

10  
11 DANILO DEL VALLE, an Individual, and  
12 JENNIFER DEL VALLE, an Individual,

13 Plaintiffs,

14 vs.

15 INDYMAC FEDERAL BANK, F.S.B., a  
16 Delaware Corporation; NDEX WEST, LLC, a  
17 Delaware Corporation; GMAC MORTGAGE,  
18 LLC, a Delaware Corporation; ALLIANCE  
BANCORP, a California Corporation, and  
DOES 1 through 10, inclusive,

19 Defendants.

Case No.

20 C09 01940

PVT

21 PVT

22 COMPLAINT FOR DAMAGES AND  
23 DECLARATORY RELIEF

JURY TRIAL DEMAND

24 TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

25 I. Preliminary Statement

26 1. Plaintiffs DANILO DEL VALLE and JENNIFER DEL VALLE (hereinafter  
27 "Plaintiff" or "Plaintiffs"), bring this action against INDYMAC FEDERAL BANK, F.S.B., a  
28 Delaware Corporation (hereinafter "INDYMAC"), NDEX WEST, LLC, a Delaware Corporation  
(hereinafter "NDEX WEST"), GMAC MORTGAGE, LLC, a Delaware Corporation (hereinafter  
//

1 "GMAC"), ALLIANCE BANCORP, a California Corporation (hereinafter "ALLIANCE"), and  
 2 DOES 1 though 10, (collectively "Defendants") to:

- 3 (a) Give effective Notice to Rescind and Cancel;
- 4 (b) Enforce Rescission;
- 5 (c) Reimburse all fees, charges, and costs paid in a consumer credit transaction pursuant  
 to violations of the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* ("TILA"), and its  
 6 implementing regulations at 12 C.F.R. § 226 *et seq.* (Reg. Z);
- 7 (d) Obtain statutory and actual relief for violations of the Fair Debt Collection Practices  
 8 Act, 15 U.S.C. 1692 *et seq.* ("FDCPA"); and
- 9 (e) Obtain a reasonable attorney fee.

10 2. Plaintiffs also seek declaratory and injunctive relief to further restrain Defendants  
 11 under Cal. Business and Professions Code § 1700, *et seq.* referred to as the Unfair Competition  
 12 Law ("UCL") under California Statutes, common law fraud, misrepresentation and deceit,  
 13 against Defendants herein. All such California State Law claims are properly asserted under this  
 14 Court's pendent or supplemental jurisdiction.

15 3. The Defendants are proper parties to be sued for claims arising out of the  
 16 transaction when Defendants are attempting to *enforce contractual obligations* and includes any  
 17 person who uses any instrumentality of interstate commerce, the mails in any business, the  
 18 principal purpose of which is the collection of any debt, directly or indirectly, owed, due, or  
 19 asserted to be owed or due to another.

20 4. The Defendants are proper parties to be sued for claims when Plaintiffs are in an  
 21 affirmative or defensive position asserting a rescission under TILA, Reg. Z, and asserting other  
 22 statutory relief under the FDCPA, the California UCL, common law fraud, misrepresentation or  
 23 deceit, etc., and for any claims in recoupment and set-off against all Defendants.

24 **II. Parties**  
 25 5. Plaintiffs DANILO DEL VALLE and JENNIFER DEL VALLE are both  
 26 *consumers* and *natural persons* as that term is defined under 15 U.S.C. § 1602(h) and 15 U.S.C.  
 27 § 1692a (3). Plaintiffs have substantive rights as a citizens domiciled here in California, the

1 owners of the *principal dwelling* known as 1834 Massachusetts Drive, Salinas, CA 93905,  
2 (hereinafter the "Property") and at all times relevant and material hereto, reside on the Property  
3 as their home.

4       6. Defendant INDYMAC is or was the designated Servicer for the purported  
5 beneficiary and may be considered a functional creditor or alternatively, is a Servicer strictly for  
6 administrative purposes subject to the Real Estate Settlement Procedures Act. Defendant  
7 INDYMAC is also a *debt collector* within the meaning of 15 U.S.C. § 1692a (6) and a  
8 corporation within the scope of California DCL, engaged in the business of collecting debts  
9 owed or due or asserted to be owed or due another and whose principal purpose is the collection  
10 of debts using mails and telephone. This Defendant may also claim a pecuniary interest and is  
11 joined and needed for just adjudication. This Defendant may be served with service of process  
12 by serving statutory agent: CORPORATION SERVICE COMPANY WHICH WILL DO  
13 BUSINESS IN CALIFORNIA AS CSC – LAWYERS INCORPORATED SERVICE, 2730  
14 GATEWAY OAKS DRIVE, SUITE 100 SACRAMENTO, CA 95833.

15       7. Defendant NDEX WEST is or was the designated Servicer for the purported  
16 beneficiary and may be considered a functional creditor or alternatively, is a Servicer strictly for  
17 administrative purposes subject to the Real Estate Settlement Procedures Act. Defendant NDEX  
18 WEST is also a *debt collector* within the meaning of 15 U.S.C. § 1692a (6) and a corporation  
19 within the scope of California DCL, engaged in the business of collecting debts owed or due or  
20 asserted to be owed or due another and whose principal purpose is the collection of debts using  
21 mails and telephone. This Defendant may also claim a pecuniary interest and is joined and  
22 needed for just adjudication. This Defendant may be served with service of process by serving  
23 statutory agent: CT CORPORATION SYSTEM, 818 WEST SEVENTH ST., LOS ANGELES,  
24 CA 90017.

25       8. Defendant GMAC is or was the designated Servicer for the purported beneficiary  
26 and may be considered a functional creditor or alternatively, is a Servicer strictly for  
27 administrative purposes subject to the Real Estate Settlement Procedures Act. Defendant GMAC  
28 is also a *debt collector* within the meaning of 15 U.S.C. § 1692a (6) and a corporation within the

1 scope of California DCL, engaged in the business of collecting debts owed or due or asserted to  
2 be owed or due another and whose principal purpose is the collection of debts using mails and  
3 telephone. This Defendant may also claim a pecuniary interest and is joined and needed for just  
4 adjudication. This Defendant may be served with service of process by serving statutory agent:  
5 CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS  
6 CSC – LAWYERS INCORPORATED SERVICE, 2730 GATEWAY OAKS DRIVE, SUITE  
7 100 SACRAMENTO, CA 95833.

8 9. Defendant ALLIANCE is or was the designated Servicer for the purported  
9 beneficiary and may be considered a functional creditor or alternatively, is a Servicer strictly for  
10 administrative purposes subject to the Real Estate Settlement Procedures Act. Defendant  
11 ALLIANCE is also a *debt collector* within the meaning of 15 U.S.C. § 1692a (6) and a  
12 corporation within the scope of California DCL, engaged in the business of collecting debts  
13 owed or due or asserted to be owed or due another and whose principal purpose is the collection  
14 of debts using mails and telephone. This Defendant may also claim a pecuniary interest and is  
15 joined and needed for just adjudication. This Defendant may be served with service of process by  
16 serving statutory agent: CT CORPORATION SYSTEM, 818 WEST SEVENTH ST., LOS  
17 ANGELES, CA 90017.

18 10. Defendants DOES 1-10 are involved in the instant case and transaction and are  
19 currently unknown to Plaintiffs. Said entities will be joined upon further discovery of their true  
20 nature and liability once these facts are known and supported by competent evidence.

21 **III. Jurisdiction/Venue**

22 11. This Court has Jurisdiction in this proceeding pursuant to 28 U.S.C. § 1331,  
23 pursuant to 15 U.S.C. § 1640(e) for TILA claims, pursuant to 15 U.S.C. § 1692k(d) for FDCPA  
24 claims and pursuant to 28 U.S.C. § 1367 for supplemental jurisdiction of Plaintiffs' state law  
25 claims. All state law claims are so related to the claims within the Court's original jurisdiction  
26 that they form part of the same case or controversy under Article 3 of the United States  
27 Constitution. The Court has authority to issue a declaratory judgment by virtue of 28 U.S.C. §  
28 //

1 2201. Counts arising under contract, common law, and the law of conveyances in real property  
 2 are properly asserted under this Court's pendent jurisdiction.

3 12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1331 generally and  
 4 whereby the real property and a substantial part of the events and claims, the subject of this suit,  
 5 are situated here, communications notifying Plaintiffs of the non-judicial foreclosure and election  
 6 to sell under the security instrument conveyed and enforced by Defendants are in this district,  
 7 and Defendants principal business are within the forum state California.

8 **IV Conditions**

9 13. All Conditions precedent have been performed or have occurred and TILA  
 10 violations may be asserted defensively now due to the non-judicial foreclosure filing and election  
 11 to sell and as a recoupment or set-off pursuant 15 U.S.C. 1637 *et seq.* "This subsection  
 12 [providing for the one year statute of limitations] does not bar a person from asserting a violation  
 13 of this subchapter in an action to collect a debt which was brought more than a year from the  
 14 date of the occurrence of the violation as a matter of defense by recoupment or set-off in such  
 15 action" (15 U.S.C. § 1640[e]), *Delta Funding Corp. v. Murdaugh*, 6 AD.3d 571, 774 N.Y.S. 2d  
 16 797 (2<sup>nd</sup> Dept. 2004); *McNinch v. Mortgage America, Inc. (In re McNinch)*, 250 B.R. 848 (Bankr  
 17 W.D. Pa. 2000)

18 14. The mere loss of a statutory right to disclosure is an injury that gives the  
 19 consumer standing for Articles III purposes, *DeMando v. Morris*, 206 F.3d 1300 (9<sup>th</sup> Cir. 2000).

20 15. Plaintiffs have standing as of date of the contract and where the contract is a  
 21 federally related mortgage transaction governed by TILA and due to the non-judicial foreclosure  
 22 filing recorded in the official records, Monterey County.

23 **V. Statement of Facts**

24 16. The federally related mortgage transaction at the root of this case was closed, and  
 25 documents were signed on or about December 4, 2006.

26 17. Plaintiffs entered into a mortgage loan transaction (hereinafter the "Transaction")  
 27 to include a Deed of Trust ("Deed of Trust") securing such Note ("Note") covering the Property,  
 28 then and now the *principal dwelling* and home of the Plaintiffs and their family.

1       18. The Transaction required the Plaintiffs to pay money arising out of a transaction  
2 in which money, property, or goods and services were the subject thereof and the same were  
3 primarily for personal, family and household purposes.

4       19. The security interest was not created to finance the acquisition or initial  
5 construction of the Plaintiffs' Property and allegedly paid off a previous consumer debts  
6 including lien mortgage debt.

7       20. The Transaction is characterized as a Consumer Credit Transaction as that term is  
8 defined under 15 U.S.C. § 1602(h) and Reg. Z § 226.2(a).

9       21. The transaction is characterized as a Closed-end Credit Transaction as that term is  
10 defined under Reg. Z § 226.2(10) where a security interest was retained in favor of the  
11 originator, Defendants as the beneficiaries.

12       22. The Transaction is subject to all content requirements set forth in 15 U.S.C. §  
13 1635(a), and 15 U.S.C. § 1638; Reg. Z §§ 226.17 – 226.23.

14       23. The following documents related to the Transaction were not lawfully provided to  
15 Plaintiffs:

- 16       a. Promissory Note;
- 17       b. Escrow Statements;
- 18       c. Handbook on Adjustable Rate Mortgages;
- 19       d. HUD Brochures;
- 20       e. Variable Rate Disclosures;
- 21       f. Business Affiliations Disclosure;
- 22       g. Private Mortgage Insurance Disclosure
- 23       h. Broker's Arrangements
- 24       i. Disbursal Disclosures
- 25       j. Equal Credit Opportunity Act Disclosure
- 26       k. Patriot Act Disclosure
- 27       l. Loan Servicing Disclosure Statement

28       //

1  
2 24. Plaintiffs were induced to enter into this Transaction without the proper  
3 opportunity to evaluate the costs and implications thereof, and in a form and manner required by  
4 applicable statute and regulation.

5 25. The failure to accurately and effectively disclose a Truth in Lending Disclosure  
6 Statement with effective Rescission Notices is a failure to provide accurately a *material*  
7 disclosure as that term is defined under 15 U.S.C. § 1602(u); Reg. Z § 226.23(a)(3)n48.

8 26. Defendants ratified this transaction with an improper, ineffective, and unlawful  
9 omission of *material* disclosures as that term is defined under 15 U.S.C. § 1602(u); Reg. Z §  
10 226.23(a)(3)n48.

11 27. On or about January 26, 2009, Plaintiffs received a "Notice of Default and  
12 Election to Sell Under Deed of Trust," copy attached hereto and incorporated fully herein as  
13 EXHIBIT 1 (4 Pages).

14 28. EXHIBIT 1 represents attempts to collect a purported debt and specifically  
15 threaten imminent legal proceedings contrary to California Civil Code.

16 29. Plaintiffs are entitled to timely notice under California Civil Code and notice of  
17 their rights under the FDCPA and have not received effective communications sufficiently  
18 providing such notice.

19 30. Defendants, at minimum, must give notice to the Plaintiffs ninety days before a  
20 foreclosure sale date and of their rights to seek validation of the debt, including other matters  
21 relating to the debt, and they failed to do so.

22 31. Further, EXHIBIT 1 induces confusion as to source and sponsorship of the title to  
23 the Property and non-judicial foreclosure services.

24 32. Specifically, EXHIBIT 1 is intentionally filed using false, misleading, and  
25 deceptive conduct directly associated with debt collection.

26 33. Said instruments are spurious and fail to identify the "true owner" of the  
27 obligation, fail to identify the "real party," and fail to provide legal "standing" to proceed to  
28 "enforce contractual obligation."

1 34. None of the Defendants are actual "note holders" or "holders in possession" of the  
2 alleged indebtedness.

35. Notwithstanding these allegations, Plaintiffs also have a continuing right to  
3 rescind the Transaction until the third business day after receiving both the proper Notice of  
4 Right of Rescission and delivery of all *material* disclosures correctly made in a form the  
5 Plaintiffs may keep pursuant to 15 U.S.C. § 1635(a) and Reg. Z § 226.23(a), and the three-day  
6 right is statutorily extended due to the foregoing *material* failures.  
7

3 36. A controversy has arisen due to Defendants' failure to provide accurate *material*  
9 disclosures so that Plaintiffs may tender any balance and extinguish the Transaction by operation  
1 of law.

1       37. The foregoing acts and *material* omissions of the Defendants were undertaken  
2 willfully, persistently, intentionally, knowingly, and/or in gross or reckless disregard of the  
3 Plaintiffs' disclosure rights.

4 38. As a result of the acts alleged above, Plaintiffs have suffered nausea, emesis,  
5 constant headaches, insomnia, embarrassment, and incurred an ascertainable loss.

## **VI. Claims For Relief**

**Count 1 - Rescission Claim under TILA; Reg. Z against ALL DEFENDANTS**

39. Plaintiffs incorporate each paragraph set forth above as if fully stated herein.

9       40.     As a result of Defendants' failure to provide accurate *material* disclosures  
0 correctly as described above, Plaintiffs are entitled to and have exercised their right of rescission  
1 of the Transaction.

2 41. Rescission of the Transaction extinguishes any liability Plaintiffs have to  
3 Defendants for finance or other charges arising from the Transaction.

4 42. Defendants have a fiduciary duty and obligation to perform upon this notice of  
5 rescission by cancelling this specific Transaction as well as any enforcement thereof.  
6 Accordingly, any alleged security instrument and notice of default and election to sell is void and  
- unenforceable under 15 U.S.C. § 1635(b).

11

43. Defendants have twenty days (20) to refund or credit the alleged account all monies paid and to void the security interest, or seek judicial guidance.

44. Defendants performance is a condition precedent to Plaintiffs' duty to tender and failure to lawfully respond gives rise to statutory and actual damages under 15 U.S.C. § 1640.

45. Any further acts to enforce an invalid security instrument and impose finance charges and fees are wrongful, improper, and a serious breach of fiduciary duty associated with Defendants obligations. Such acts violate TILA, are contrary to the Real Estate Settlement Procedures Act, and are contrary to the explicit statutory requirements and contract between the parties.

46. Said acts entitle Plaintiffs to statutory and actual relief, orders enforcing rescission, and a reasonable attorney fee.

## **Count 2 - TILA Claims against ALL DEFENDANTS**

47. Plaintiffs incorporate each paragraph set forth above as if fully stated herein.

48. The original payee of the note and beneficiary of all other documents at a purported closing with Defendants acted in contravention of TILA 15 U.S.C. § 1601 *et seq.* and Reg. Z in the following particulars, each and all of which may also be asserted affirmatively and defensively by Plaintiffs as a result.

49. The documents not provided to the Plaintiffs in conjunction with this consumer credit transaction violated the requirements of TILA; Reg. Z in the following respects:

(a) By failing to provide all required disclosures prior to consummation of the Transaction in violation of 15 U.S.C. § 1638(b); Reg. Z § 226.17(b),

(b) By failing to make the required disclosures 'clearly and conspicuously' in writing in violation of 15 U.S.C. § 1632(a); Reg. Z § 226.17(a)(1),

(c) By failing to reflect the legal obligation in effect at the outset of the transaction under Reg. Z § 226.17(c)(1).

(d) By failing to provide effectively the required number of Notice of Right to Cancel under 15 U.S.C. § 1635 and Reg. Z § 226.23(h).

11

1 (e) By failing to accurately and effectively disclose the TILA Disclosure Statement in  
2 violation of 15 U.S.C. § 1602(u); Reg. Z 226.23(a)(3),

3 50. Said acts entitle Plaintiffs to statutory and actual relief, and a reasonable attorney  
4 fee.

### **Count 3 - FDCPA Claims against ALL DEFENDANTS**

6 51. Plaintiffs incorporate each paragraph set forth above as if fully stated herein.

7 52. Defendants violated the FDCPA in the following particulars:

8 (a) By failing to provide a validation notice under 15 U.S.C. § 1692(e)(11) and within  
9 five days of the initial communication under 15 U.S.C. § 1692(g);

(b) The use of false or misleading representations or deceptive means to collect or attempt to collect a debt in violation of 15 U.S.C. §§ 1692(e) and 1692(e)(10);

2 (c) The use of unfair or unconscionable means to collect or attempt to collect any  
3 debt in violation of 15 U.S.C. § 1692(f).

4 53. Said acts entitle Plaintiffs of statutory and actual relief, a declaration the  
5 Defendants violated the FDCPA, and a reasonable attorney fee.

**Count 4 - Cal. Bus. And Prof. Code § 17200 *et seq.* Claims and Recoupment against**

**ALL DEFENDANTS**

8 54. Plaintiffs re-allege and incorporate herein the allegations contained in the  
9 preceding paragraphs inclusive above.

0 55. Plaintiffs bring this action as a private attorney general acting on his own behalf,  
1 pursuant to Cal. Business and Professions Code § 17200, *et seq.* referred to as the Unfair  
2 Competition Law (“UCL”).

3 56. Plaintiffs are acting in this capacity to remedy the ongoing unlawful, unfair and  
4 fraudulent business practices alleged herein, and to seek injunctive relief and restitution on his  
5 behalf as being affected thereby.

6        57. The foregoing acts and omissions of Defendants affect trade and commerce as  
7 that term is defined under the UCL.

8

1       58. The UCL defines unfair competition to include any unlawful, unfair, or fraudulent  
2 business act or practice and provides that a court may order injunctive relief and restitution to  
3 affected parties as a remedy for any violation of the UCL.

4       59. Beginning on the dates indicated and at all times relevant herein, Defendants and  
5 the DOE Defendants have committed acts of unfair competition proscribed by the UCL  
6 including the practices alleged herein against Plaintiffs.

7       60. Prior to the filing of the claims in this action, and continuing thereafter,  
8 Defendants have been systematically violating the provisions of TILA, Reg. Z, the FDCPA, the  
9 contract between parties, and to such extent as to induce confusion as to source and sponsorship  
10 of services.

11       61. These violations are and were a matter of their standard corporate policy, and  
12 constitute a consistent pattern and practice of unlawful corporate behavior.

13       62. The business acts and practices of these Defendants, as hereinabove alleged,  
14 constitute "unlawful" business practices under UCL in that, for the reasons set forth above, said  
15 acts and practices violate the provisions of TILA, Reg. Z, the FDCPA, the contract between the  
16 parties, and their fiduciary duties.

17       63. The business acts and practices of these Defendants, as hereinabove alleged,  
18 constitute "unfair" business practices under UCL in that said acts and practices offend *public*  
19 *policy* and are substantially injurious to Plaintiffs and all consumers. Said acts and practices  
20 have no utility that outweighs their substantial harm to Plaintiffs, all consumers, and potential  
21 homeowners.

22       64. In the course of this Transaction, Defendants made one or more  
23 misrepresentations and/or failed to make accurate representations and/or failed to provide  
24 *material* information about the Transaction as set forth more fully above.

25       65. Specifically, Defendants processed and ratified this Transaction, substantially  
26 amended and failed to deliver *material* disclosures under TILA, failed to comply with the  
27 contract between the parties, failed to comply with statutory good faith and fair lending.

28       //

1       66. Said misrepresentation and failure to make accurate representations were made  
 2 knowingly or with reason to know that Plaintiffs would rely thereon.

3       67. Said misrepresentations and failure to make accurate representations were  
 4 *material* to the Transaction from origination to present.

5       68. Said misrepresentations and failure to make accurate representations were made  
 6 with intent and the Plaintiffs relied thereon by seeking legal counsel and filing this defensive  
 7 claim in recoupment.

8       69. Plaintiffs did reasonably rely as specified in these factual allegations.

9       70. Plaintiffs were thereby damaged and has a substantial ascertainable loss.

10       71. The business acts and practices of Defendants, as hereinabove alleged, constitute  
 11 "fraudulent" business practices under UCL in that said acts and practices are likely to deceive the  
 12 public and affected consumers as to their legal rights and obligations, and by use of such  
 13 deception, falsifying documents, failure to deliver *material* documents, and concealment, may  
 14 preclude consumers from exercising legal rights to which they are entitled.

15       72. The unlawful, unfair and fraudulent business acts and practices of Defendants  
 16 described herein present a continuing threat to members of the general public and Plaintiffs in  
 17 that Defendants and the DOE Defendants are currently engaging in such acts and practices, and  
 18 will persist and continue to do so unless and until an injunction is issued by this Court.

19       73. Pursuant to the UCL § 17203, Plaintiffs seek an order enjoining Defendants from  
 20 engaging in the acts and practices as hereinabove alleged, and ordering that Defendants provide  
 21 appropriate restitution to Plaintiffs.

22       74. Plaintiffs seeks recovery of attorney's fees, costs and expenses incurred in the  
 23 filing and prosecuting this action pursuant to the Code of Civil Procedures § 1021.5 and any  
 24 other applicable law.

25                   **Count 5 - For Quiet Title against ALL DEFENDANTS**

26       75. Plaintiffs re-allege and incorporate herein the allegations contained in the  
 27 preceding paragraphs inclusive above.

28       //

1       76. Plaintiffs are the owners of the SUBJECT PROPERTY per the Deed of Trust  
 2 executed by the Plaintiffs.

3       77. The basis of Plaintiffs' interest in title is a Deed of Trust from Defendants,  
 4 granting the SUBJECT PROPERTY to Plaintiffs, and recorded in the Official Records of the  
 5 County of Monterey.

6       78. Plaintiffs are seeking to quiet title against the claims of Defendants as follows:  
 7 Defendants are seeking to hold themselves out as the fee simple owners of the subject properties,  
 8 when in fact Plaintiffs have an interest in such properties held by Defendants, when Defendants  
 9 have no right, title, interest, or estate in the SUBJECT PROPERTY, and Plaintiffs' interest is  
 10 adverse to Defendants' claims of ownership.

11      79. Plaintiffs seek to quiet title as of February 20, 2009.

12      80. Plaintiffs therefore seek a judicial declaration that the title to the SUBJECT  
 13 PROPERTY is vested in Plaintiffs alone and that Defendants and their successors be declared to  
 14 have no estate, right, title, or interest in the SUBJECT PROPERTY and that said Defendants,  
 15 and each of them, be forever enjoined from asserting any estate, right, title, or interest in the  
 16 SUBJECT PROPERTY, adverse to Plaintiffs herein.

17                   **VII. Jury Trial Demand**

18       Pursuant to the seventh amendment to the Constitution of the United States of America,  
 19 Plaintiffs are entitled to, and hereby demands, a trial by jury.

20                   **VIII. Prayer for Relief**

21       WHEREFORE, as a result of the violations of the Act and Regulation Z, pursuant to 15  
 22 U.S.C. §§ 1635(a), 1640(a), and 1641(c), Plaintiffs prays for judgment against Defendants as  
 23 follows:

24       1. Rescission of this Transaction,  
 25       2. Termination of any security interest in Plaintiffs' Property created under the  
       Transaction,  
 26       3. Order Defendants to return of any money or property given by the Plaintiffs to  
       anyone, including the Defendants, in connection with this Transaction,

- 1 4. Statutory damages of no less than \$2,000 for the disclosure violations,
- 2 5. Statutory damages of no less than \$2,000 if Defendants fail to respond
- 3 properly to Plaintiffs' rescission notice,
- 4 6. Statutory Damages as provided by the FDCPA,
- 5 7. Statutory Damages as provided by Cal. UCL,
- 6 8. Enjoin Defendants during pendency of this action, permanently thereafter,
- 7 from instituting, prosecuting, or maintaining a proceeding on the Plaintiffs'
- 8 Property, from recording any deeds or mortgages regarding the Property
- 9 except, a lawful release of lien, and from otherwise taking any steps to deprive
- 10 Plaintiffs' ownership of the Property,
- 11 9. Order that, if Defendants fail to further respond lawfully to Plaintiffs' notice
- 12 of rescission, Plaintiffs has no duty to tender, but in the alternative, if tender is
- 13 required, determine the amount of the tender obligation in light of Plaintiffs'
- 14 claims, and order Defendants to accept tender on reasonable terms over a
- 15 reasonable period of time,
- 16 10. Reasonable attorney's fee and costs of suit,
- 17 11. Actual damages in an amount to be determined at trial,
- 18 12. For such other and further relief as the Court may deem just and proper.

19  
20 Dated: April 13, 2009

21  
22 The Law Offices of Carlo O. Reyes

23 By:   
24 CARLO O. REYES  
25 Attorney for the Plaintiffs

# EXHIBIT 1

(FOUR PAGES)